

APPEAL NO. 170182
FILED MARCH 23, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 6, 2016, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the date of injury is (date of injury); (2) the appellant (claimant) did not sustain a repetitive trauma injury on (date of injury); (3) the respondent (carrier) is not relieved from liability under Section 409.002 because the claimant timely notified his employer pursuant to Section 409.001; and (4) the carrier is not relieved from liability under Section 409.004 because the claimant timely filed a claim for compensation within one year of the injury as required by Section 409.003.

The claimant appealed the hearing officer's determination that he did not sustain a compensable repetitive trauma injury on (date of injury), arguing that the evidence supports a finding that he did sustain such an injury. The carrier responded, urging affirmance.

The hearing officer's determinations that the date of injury is (date of injury); that the carrier is not relieved from liability under Section 409.002 because the claimant timely notified his employer pursuant to Section 409.001; and that the carrier is not relieved from liability under Section 409.004 because the claimant timely filed a claim for compensation within one year of the injury as required by Section 409.003 were not appealed and have become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and remanded in part.

The claimant claims to have sustained a repetitive trauma injury to his left knee while performing his duties as a tree trimmer which require that he climb up and down seven to nine steps, seven to nine times per day to get to and from a truck mounted "lift bucket." The claimant testified that his knee began swelling while at work on (date of injury), and that he sought treatment in the emergency room on January 8, 2016, where the knee was aspirated.

The hearing officer's determination that the claimant did not sustain a compensable repetitive trauma injury on (date of injury), is supported by sufficient evidence and is affirmed.

We note; however, that in the Discussion section of his decision the hearing officer stated:

The other problem with [Dr. R] opinions . . . is that he is describing acute-type injuries, not repetitive trauma injuries. An acute injury is consistent with the claimant's and Holt's [Mr. H] testimony that there was no apparent problem with the claimant's left knee prior to January 2016, and that it began swelling on (date of injury).

It is clear from the hearing officer's statement and the record that the issue of whether or not the claimant sustained a specific injury as opposed to a repetitive trauma injury was actually litigated by the parties; however, the hearing officer failed to include in his Decision and Order, findings of fact, conclusions of law and a decision concerning such issue. We accordingly reverse the hearing officer's decision as being incomplete and remand the issue of compensability to the hearing officer to make findings of fact, conclusions of law, and a decision consistent with the evidence in this case concerning whether or not the claimant sustained a compensable specific or acute injury on (date of injury).

REMAND INSTRUCTIONS

On remand, the hearing officer is to determine whether or not the claimant sustained a compensable specific or acute injury on (date of injury). The hearing officer is to make findings of fact, conclusions of law, and a decision regarding the issue of compensability that is consistent with this decision. The hearing officer is not to consider additional evidence on remand.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Department of Insurance, Division of Workers' Compensation, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RICHARD J. GERGASKO, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.**

K. Eugene Kraft
Appeals Judge

CONCUR

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge